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May 7, 2024

Mr. David J. Smith, Clerk of Court
U.S. Court of Appeals for the Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, GA 30303

**Re: *Eknes-Tucker v. Governor of the State of Alabama*, No. 22-11707
Response to Plaintiffs' Rule 28(j) Supplemental Authority Letter
Concerning *Kadel v. Folwell*, No. 22-1721 (4th Cir. Apr. 29, 2024)**

Dear Mr. Smith:

Kadel was about state health insurance reimbursement policies not limited to minors. The opinion does not address *Eknes-Tucker*. Nor does it address decisions from other circuits that have considered laws like Alabama's SB184.

Kadel's reasoning offers Plaintiffs-Appellees little refuge regardless. Even the majority conceded that "gender-dysphoria treatments" are "still developing." Op.50. And as Judge Wilkinson explained, "gender dysphoria treatments" "are matters of significant scientific debate and uncertainty." Op.121 (dissenting). As he also pointed out, "[t]he right forum" for that debate "is a legislative hearing," not federal court. *Id.* at 122.

On Equal Protection, as Judge Richardson noted, "not every law that *references* or *relates* to sex necessarily *classifies* on that basis." Op.71 (dissenting). Instead, courts "must examine whether the policy uses those terms to draw distinctions between the sexes." *Id.* at 72. Here, SB184 is tethered to specific medical interventions and does not discriminate "based on the person's sex or transgender status." *Id.* at 83. It "treats males and females, cisgender individuals and transgender individuals, precisely the same." Op.124 (Wilkinson, J., dissenting).

In fact, even under *Bostock*'s "change the sex" test, "changing plaintiffs' sex (or even their transgender status) would not change" their qualification for the regulated interventions. Op.97 (Richardson, J., dissenting). One "can only label these policies as sex-based" by disregarding the differences between the interventions. *Id.* at 110.

Kadel thus rests on the reality-defying premise that constructing a neovagina from penile tissue—a surgery only males can undergo—is the same treatment as a vaginoplasty in a female to address "a congenital defect." *Id.* One need not review the medical literature—see, e.g., Ting & Bowers, *Penile Inversion Vaginoplasty* (2020) (illustrating the point)—to reach Judge Richardson's conclusion: "These are not the same!" Op.110.

Neither Plaintiffs-Appellants nor the *Kadel* majority offer any reasoned basis to equate these different treatments. See generally Alabama.Br.6-16, *Labrador v. Poe*, No. 23A763, 2024 WL 869114 (U.S. Feb. 21, 2024). Once it is properly recognized that SB184 regulates interventions only one sex can undergo, "*Geduldig*, read fairly, obviously applies." Op.104-06 (Richardson, J., dissenting); see Opening Br.47-55; Reply Br.14-19. The panel's decision here is correct.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that this document complies with the type-volume limitations set forth in Fed. R. App. P. 28(j) and 11th Cir. R. 28, I.O.P. 6. The document contains 350 words, including all headings, footnotes, and quotations, and excluding the parts of the brief exempted under Fed. R. App. P. 32(a)(7)(B)(iii).

2. In addition, this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

s/ Edmund G. LaCour Jr.
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed on May 7, 2024, using the CM/ECF Document Filing System, which will send notification of such filing to all noticed parties.

s/ Edmund G. LaCour Jr.
Edmund G. LaCour Jr.
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CERTIFICATE OF INTERESTED PERSONS

In accordance with 11th Cir. R. 26.1-1(a)(3) and 26.1-2(b), undersigned counsel certifies that the following listed persons and parties may have an interest in the outcome of this case:

1. Abdul-Latif, Hussein – Amicus Curiae;
2. Academic Pediatric Association – Amicus Curiae;
3. Alabama Center for Law and Liberty – Amicus Curiae;
4. Alabama Chapter of the American Academy of Pediatrics – Amicus Curiae;
5. Alaska, State of – Amicus Curiae;
6. Alstott, Anne – Amicus Curie;
7. America First Legal Foundation – Amicus Curiae;
8. American Academy of Child and Adolescent Psychiatry – Amicus Curiae;
9. American Academy of Family Physicians – Amicus Curiae;
10. American Academy of Pediatrics – Amicus Curiae;
11. American Academy of Nursing – Amicus Curiae;
12. American Association of Physicians for Human Rights, Inc. – Amicus Curiae;
13. American College of Obstetricians and Gynecologists – Amicus Curiae;
14. American College of Osteopathic Pediatricians – Amicus Curiae;
15. American College of Physicians – Amicus Curiae;

16. American Medical Association – Amicus Curiae;
17. American Pediatric Society – Amicus Curiae;
18. American Psychiatric Association – Amicus Curiae;
19. Arnold, Stephanie York – Amicus Curiae;
20. Association of American Medical Colleges – Amicus Curiae;
21. Association of Medical School Pediatric Department Chairs – Amicus Curiae;
22. Andersen, Alison L. – Counsel for Amici Curiae;
23. Anderson, Tom – Former Defendant;
24. Arizona, State of – Amicus Curiae;
25. Arkansas, State of – Amicus Curiae;
26. Austin, Heather – Plaintiff;
27. Australian Professional Association for Trans Health (The) – Amicus Curiae;
28. Baia, Elizabeth – Counsel for Amici Curiae;
29. Bailey, Daryl D. – Defendant;
30. Barday, Shireen A. – Counsel for Amicus Curiae;
31. Barham, Richard – Amicus Curiae;
32. Barnes, Brian W. – Counsel for Defendants;
33. Barnhart, Dr. David L. (Jr.) – Amicus Curiae;
34. Becker, Laura – Amicus Curiae;

35. Beninati, Nancy – Counsel for Amici Curiae;
36. Blakemore, Robin – Amicus Curiae;
37. Blaylock, C. Wilson – Former Defendant;
38. Boccuzzi, Carmine D, (Jr.) – Counsel for Amici Curiae;
39. Boe, Brianna – Plaintiff (pseudonym);
40. Boergers, Kathleen – Counsel for Amici Curiae;
41. Bonta, Rob – Counsel for Amici Curiae;
42. Boulware, Rebecca Kamody – Amicus Curiae;
43. Bowdre, Alexander Barrett – Counsel for Defendants;
44. Bundesverband Trans* e.V. – Amicus Curiae;
45. Bridges, Dr. Rebecca L. – Amicus Curiae;
46. Bronni, Nicholas J. – Counsel for Amici Curiae;
47. Broyles, Vernadette R. – Counsel for Amici Curiae;
48. Bryan, Chad W. – U.S. Magistrate Judge;
49. Burke, Liles C. – U.S. District Court Judge;
50. Burleigh, Billy – Amicus Curiae;
51. California, State of – Amicus Curiae;
52. Cantrell, Michael A. – Counsel for Amici Curiae;
53. Carr, Danny – Defendant;
54. Central Conference of American Rabbis – Amicus Curiae;
55. Cheek, Jason R. – Counsel for Intervenor-Plaintiff;

56. Child & Parental Rights Campaign, Inc. – Counsel for Amicus Curiae;
57. Clark, Matthew J. – Counsel for Amicus Curiae;
58. Clarke, Kristen – Counsel for Intervenor-Plaintiff;
59. Coe, Brian – Amicus Curiae (pseudonym);
60. Coe, Laura – Amicus Curiae (pseudonym);
61. Colavecchio, J.D. – Counsel for Amici Curiae;
62. Colorado, State of – Amicus Curiae;
63. Connecticut, State of – Amicus Curiae;
64. Conrady, Julie – Amicus Curiae;
65. Cooper, Erica – Amicus Curiae;
66. Crocker, Champ – Defendant;
67. Davies, Andrew Rhys – Counsel for Amici Curiae;
68. Davis, James William – Counsel for Defendants;
69. Delaware, State of – Amicus Curiae;
70. Dermody, Eliza – Counsel for Intervenor-Plaintiff;
71. Dingus, Jaimie – Amicus Curiae;
72. District of Columbia – Amicus Curiae;
73. Doss, Jeffrey P. – Counsel for Plaintiffs;
74. Eagan, Melody Hurdle – Counsel for Plaintiffs;
75. Elgart, Allison – Counsel for Amici Curiae;
76. Elias, Nimrod Pitsker – Counsel for Amici Curiae;

77. Endocrine Society (The) – Amicus Curiae;
78. Eknes-Tucker, Paul A. – Plaintiff;
79. Escalona, Elizabeth Prim Formby – Counsel for Intervenor-Plaintiff;
80. Ethics and Public Policy Center – Amicus Curiae;
81. Federación Colectivo Hombres XX, AC – Amicus Curiae;
82. Finney, Johnny R. (II) – Amicus Curiae;
83. Foster, Carolyn – Amicus Curiae;
84. Fuller, David – Amicus Curiae;
85. G. C. – Amicus Curiae (pseudonym);
86. Genau, Joseph – Amicus Curiae;
87. George, Renu R. – Counsel for Amici Curiae;
88. Georgia, State of – Amicus Curiae;
89. Gibson, Henry N. – Amicus Curiae;
90. Global Justice Institute – Amicus Curiae;
91. Hamilton, Gene – Counsel for Amicus Curiae;
92. Hamilton-Poore, Dr. Samuel F. – Amicus Curiae;
93. Hamilton-Poore, Terry – Amicus Curiae;
94. Hasson, Mary Rice – Amicus Curiae;
95. Hawaii, State of – Amicus Curiae;
96. Health Professionals Advancing LGBTQ Equality – Amicus Curiae;
97. Hecker, Elizabeth P. – Appellate Counsel for Intervenor-Plaintiff;

98. Henkin, Steven – Amicus Curiae;
99. Hopkins, C. Lynn – Amicus Curiae;
100. Hutchinson, Laura – Amicus Curiae;
101. Illinois, State of – Amicus Curiae;
102. Indiana, State of – Amicus Curiae;
103. Isaacson, Eric Alan – Counsel for Amici Curiae;
104. Isasi, William – Counsel for Amici Curiae;
105. Isner, Shane – Amicus Curiae;
106. Ivey, Kay – Defendant;
107. Jacobs, Dylan L. – Counsel for Amici Curiae;
108. Jimmerson, Dr. Ellin – Amicus Curiae;
109. Kerschner, Helena – Amicus Curiae;
110. Koe, Rachel – Plaintiff (pseudonym);
111. Kuper, Laura – Amicus Curiae;
112. Krishna, Praveen S. – Appellate Counsel for Intervenor-Plaintiff;
113. LGBT+ Denmark – Amicus Curiae;
114. LaCour, Edmund G. (Jr.) – Counsel for Defendants;
115. Lamar-Hart, Cynthia – Amicus Curiae;
116. Lannin, Cortlin H. – Counsel for Amici Curiae;
117. Lanosa, Michael – Counsel for Amici Curiae;
118. Lareau, Alyssa C. – Counsel for Intervenor-Plaintiff;

119. Levi, Jennifer L. – Counsel for Plaintiffs;
120. Loe, Brian – Amicus Curiae (pseudonym);
121. Loe, Sarah – Amicus Curiae (pseudonym);
122. Loper, Dr. Helene – Amicus Curiae;
123. Louisiana, State of – Amicus Curiae;
124. Maine, State of – Amicus Curiae;
125. Marshall, Margaret L. – Counsel for Intervenor-Plaintiff;
126. Marshall, Steve – Defendant;
127. Martinez, Gabriel – Counsel for Amici Curiae;
128. Martinez, Michael Rodriguez – Counsel for Amici Curiae;
129. Maryland, State of – Amicus Curiae;
130. Massachusetts, State of – Amicus Curiae;
131. Mattern, David P. – Counsel for Plaintiffs;
132. Mauldin, Dylan – Counsel for Defendants;
133. McAlister, Mary E. – Counsel for Amici Curiae;
134. McCoy, Scott D. – Counsel for Plaintiffs;
135. McNamara, Meredith – Amicus Curiae;
136. Medical Association of Pediatric Nurse Practitioners – Amicus Curiae;
137. Men of Reform Judaism – Amicus Curiae;
138. Mills, Christopher Ernest – Counsel for Defendants;
139. Mississippi, State of – Amicus Curiae;

140. Missouri, State of – Amicus Curiae;
141. Mitchell, Jonathan F. – Counsel for Amicus Curiae;
142. Moe, Jane – Plaintiff (pseudonym);
143. Montag, Coty Rae – Counsel for Intervenor-Plaintiff;
144. Montana, State of – Amicus Curiae;
145. Morrison, Rachel N. – Counsel for Amicus Curiae;
146. National Association of Pediatric Nurse Practitioners – Amicus Curiae;
147. Nebraska, State of – Amicus Curiae;
148. Nevada, State of – Amicus Curiae;
149. New Jersey, State of – Amicus Curiae;
150. New Mexico, State of – Amicus Curiae;
151. New York, State of – Amicus Curiae;
152. Newton, Nicole – Amicus Curiae;
153. Noe, Kathy – Plaintiff (pseudonym);
154. North Carolina, State of – Amicus Curiae;
155. Norwegian Organization for Sexual and Gender Diversity (The) – Amicus Curiae;
156. Oklahoma, State of – Amicus Curiae;
157. Oladeinbo, Gilbert Olusengun – Counsel for Plaintiffs;
158. Olezeski, Christy – Amicus Curiae;
159. Oregon, State of – Amicus Curiae;

160. Ormand, Justin L. – Counsel for Amici Curiae;
161. Orr, Asaf – Former Counsel for Plaintiffs;
162. Parsons, Abby – Counsel for Plaintiffs;
163. Patterson, Peter A. – Counsel for Defendants;
164. Pediatric Endocrine Society – Amicus Curiae;
165. Pennsylvania, State of – Amicus Curiae;
166. Perigoe, Kelly – Counsel for Plaintiffs;
167. Peterson, Misty L. – Counsel for Plaintiffs;
168. Poe, Megan – Plaintiff (pseudonym);
169. Powers, John Michael – Former Counsel for Intervenor-Plaintiff;
170. Pratt, James Andrew – Counsel for Plaintiffs;
171. Professional Association for Transgender Health Aotearoa New Zealand
(The) – Amicus Curiae;
172. Ragsdale, Barry Alan – Counsel for Amici Curiae;
173. Ramer, John D. – Counsel for Defendants;
174. Ray, Brent P. – Counsel for Plaintiffs;
175. Riehl, Christina – Counsel for Amici Curiae;
176. Reinke, Adam – Counsel for Plaintiffs;
177. Renner, Steven S. – Amicus Curiae;
178. Reynolds, Laura – Amicus Curiae;
179. Rhode Island, State of – Amicus Curiae;

180. Robin-Vergeer, Bonnie – Appellate Counsel for Intervenor-Plaintiff;
181. Roe, Rebecca – Plaintiff (pseudonym);
182. Ross, Jonathan S. – Counsel for Intervenor-Plaintiff;
183. Rothbauer, Chris – Amicus Curiae;
184. Rutledge, Leslie – Counsel for Amici Curiae;
185. Saei, Yusuf – Counsel for Plaintiffs;
186. Sanders, Jennifer – Amicus Curiae;
187. Sechler, Philip Andrew – Counsel for Defendants;
188. Seiss, Benjamin Matthew – Counsel for Defendants;
189. Seta ry / Seta rf / Seta Lgbtiq Rights in Finland – Amicus Curiae;
190. Shortnacy, Michael B. – Former Counsel for Plaintiffs;
191. Schwabauer, Barbara – Appellate Counsel for Intervenor-Plaintiff;
192. Smalts, Laura Perry – Amicus Curiae;
193. Smith, John – Amicus Curiae;
194. Societies for Pediatric Urology – Amicus Curiae;
195. Society for Adolescent Health and Medicine – Amicus Curiae;
196. Society for Pediatric Research – Amicus Curiae;
197. Society of Pediatric Nurses – Amicus Curiae;
198. Soe, Melissa – Amicus Curiae (pseudonym);
199. Soto, Diego Armando – Counsel for Plaintiffs;
200. South Carolina, State of – Amicus Curiae;

201. Southeast Conference of the United Church of Christ – Amicus Curiae;
202. Stewart, Sandra Jean – Former Counsel for Intervenor-Plaintiffs;
203. Strickland, Kevin L. – Amicus Curiae;
204. Stone, Jessica Lynn – Counsel for Plaintiffs;
205. Stonewall UK – Amicus Curiae;
206. Stoll, Christopher F. – Counsel for Plaintiffs;
207. Swedish Federation for Lesbian, Gay, Bisexual, Transgender, Queer and Intersex Rights (The) – Amicus Curiae;
208. Szilagyi, Nathalie – Amicus Curiae;
209. Tarbox, James – Defendant;
210. Terry, Abigail Hoverman – Counsel for Plaintiffs;
211. Texas, State of – Amicus Curiae;
212. Thomason, Beth – Amicus Curiae;
213. Thompson, David H. – Counsel for Defendants;
214. Thornton, Joel H. – Counsel for Amici Curiae;
215. Toyama, Kaitlin – Counsel for Intervenor-Plaintiff;
216. Trevor Project (The) – Amicus Curiae;
217. Union for Reform Judaism – Amicus Curiae;
218. United States of America – Intervenor-Plaintiff;
219. Unitarian Universalist Association – Amicus Curiae;

220. Universal Fellowship of Metropolitan Community Churches – Amicus Curiae;
221. Utah, State of – Amicus Curiae;
222. Vermont, State of – Amicus Curiae;
223. Voe, Robert – Plaintiff (pseudonym);
224. Voights, Anne M. – Counsel for Plaintiffs;
225. Wadsworth, Stephen D. – Counsel for Intervenor-Plaintiff;
226. Warbelow, Sarah – Counsel for Plaintiffs;
227. Washington, State of – Amicus Curiae;
228. Weaver, Lily – Counsel for Amici Curiae;
229. Weaver, Susan Kay – Counsel for Amici Curiae;
230. Wenck, Julia H. – Counsel for Amici Curiae;
231. West Virginia, State of – Amicus Curiae;
232. Whelan, Amy – Counsel for Plaintiffs;
233. Wilkerson, Mark Douglas – Counsel for Amici Curiae;
234. Williams, Renee – Counsel for Intervenor-Plaintiff;
235. Wilson, Thomas Alexander – Former Counsel for Defendants;
236. Wood, Kimberly – Amicus Curiae;
237. Woodke, Lane Hines – Counsel for Intervenor-Plaintiff;
238. Women of Reform Judaism – Amicus Curiae;
239. World Professional Association for Transgender Health – Amicus Curiae;

- 240. Vague, Amie A. – Counsel for Plaintiffs;
- 241. Vance, Robert S. (III) – Counsel for Amici Curiae;
- 242. Ventiere, Jessica – Defendant;
- 243. Veta, D. Jean – Counsel for Amici Curiae;
- 244. Walker, Susan Russ – U.S. Magistrate Judge;
- 245. Weaver, Cynthia Cheng-Wun – Counsel for Plaintiffs;
- 246. Zelbo, Howard S. – Counsel for Amici Curiae;
- 247. Zoe, James – Plaintiff (pseudonym).

Respectfully submitted this 7th day of May, 2024.

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